Rosselan bin Suboh v Menteri Dalam Negeri & Anor

HIGH COURT (MELAKA) — CRIMINAL APPLICATION MT1–44–1 OF 2004
LOW HOP BING J
22 SEPTEMBER 2004

Criminal Procedure — Habeas corpus — Drug Dependants — Detention of — Treatment and rehabilitation — Order for — Discrepancies between reports — Whether magistrate erred in making order

The applicant applied a writ of *habeas corpus*, seeking his release from the Tampin Rehabilitation Centre which was ordered by the magistrate under s6(1)(a) of the Drug Dependants (Treatment and Rehabilitation) Act 1983 ('the Act'). He contended that the said order was null and void as it did not take into account the discrepancy between the reports made by the medical officer and the rehabilitation officer.

Held, allowing the application:

The detention order was not legally sustainable, as a result of which *habeas corpus* must issue. The said magistrate failed to appreciate the discrepancy that existed in ordering the treatment and rehabilitation order under the Act (see paras 11–12).

[**Bahasa Malaysia summary**

Pemohon telah memohon satu writ *habeas corpus*, berhubung pelepasan beliau daripada Pusat Pemulihan Tampin yang diperintahkan oleh majistret di bawah s6(1)(a) Akta Penagih Dadah (Rawatan dan Pemulihan) 1983 ('Akta tersebut'). Beliau menegaskan bahawa perintah tersebut adalah terbatal dan tidak sah kerana ia tidak mengambil kira percanggahan dalam laporan-laporan yang dibuat oleh pegawai perubatan dan pegawai pemulihan tersebut.

Diputuskan, membenarkan permohonan tersebut:

Perintah penahanan tidak sah dibuat, oleh itu *habeas corpus* hendaklah dikeluarkan. Majistret telah gagal untuk meneliti percanggahan yang wujud semasa memerintahkan perintah rawatan dan pemulihan itu di bawah Akta tersebut (lihat perenggan 11–12).]

Notes

For cases on application for *habeas corpus* generally, see 5 *Mallal's Digest* (4th Ed, 2001 Reissue) paras 1727–1824.

For cases on proper procedure for *habeas corpus*, see 5 *Mallal's Digest* (4th Ed, 2001 Reissue) paras 1803–1818.

For cases on detention of drug addict, see 5 *Mallal's Digest* (4th Ed, 1997 Reissue) paras 1513–1516.

Cases referred to

Majistret, Mahkamah Majistret Rawang & Anor v Gurdeep Singh a/l Atma Singh [2000] 6 MLJ 112 (folld)

Legislation referred to

Drug Dependants (Treatment and Rehabilitation) Act 1983 s 6(1), (a)

Appeal from: Miscellaneous Application No 89–117 of 2004 (Magistrate's Court, Alor Gajah)

Muhammad Faiz bin Fadzil (Zulkafli, Hussin & Co) for the applicant.
Abd Rani bin Megat Kassim (Senior Federal Counsel II) (Kementerian Keselamatan Dalam Negeri) for the respondent.

Low Hop Bing J:

I APPLICATION

[1] Before me is the applicant's notice of motion seeking a writ of *habeas corpus* to be directed to the superintendent of the rehabilitation centre in Tampin to bring forth the applicant to the High Court Malaya in Melaka to be released forthwith.

II FACTUAL BACKGROUND

[2] The affidavit in support of the notice of motion was affirmed by the applicant's wife who deposed that on 27 March 2004, the applicant was detained by the police and brought before the Alor Gajah magistrate's court ('the magistrate's court'), which directed him to be detained for urine test under the Drug Dependants (Treatment and Rehabilitation) Act 1983 ('the Act').

[3] On 19 May 2004, the applicant was brought before the magistrate's court and ordered to undergo treatment and rehabilitation in the Rehabilitation Centre Tampin ('the Centre') for two years under s 6(1)(a) of the Act ('the detention order'). A reference hereinafter to a section is a reference to that section in the Act unless otherwise stated.

[4] The deponent further affirmed that the detention order is null and void as it was made without complying proper procedure and without reasonable cause.

[5] The medical officer who issued a certificate dated 6 April 2004 in form 2 under s 6(1) stated that the dangerous drug which was used and had caused

the applicant to become a drug dependant was morphine while the report of the rehabilitation officer made pursuant to s 6(1) stated that the drug used by the applicant was heroin.

III SUBMISSIONS

[6] En Muhammad Faiz Bin Fadzil, learned counsel for the applicant, submitted, *inter alia*, that the detention order has not complied with s 6(1)(a).

[7] In reply senior federal counsel, En Abdul Rani bin Megat Kassim, contended, *inter alia*, that the evidence and notes of proceedings recorded by the learned magistrate has complied with s 6(1), as amended by Act A1018.

IV DECISION OF THE COURT

[8] Section 6(1) as amended vide Act A1018 with effect from 1 September 1998 merits reproduction as follows :

> Magistrate's order which may be made on a drug dependant
>
> 6 (1) Where a person who has undergone the tests referred to in section 3 or 4 and, in consequence of such tests, is certified by a government medical officer or a registered medical practitioner to be a drug dependant, the officer shall produce him, or cause him to appear before a Magistrate, and the Magistrate shall upon the recommendation of a Rehabilitation Officer and after giving such person an opportunity to make representations:
>
> (i) order such a person to undergo treatment at a Rehabilitation Centre specified in the order for a period of two years and thereafter to undergo supervision by an officer at the place specified in the order for a period of two years; or
>
> (ii) order such person to undergo supervision by an officer at the place specified in the order for a period of not less than two and not more than three years.

[9] The amended s 6(1) above came up for judicial consideration by Kang Hwee Gee J in *Majistret, Mahkamah Majistret Rawang & Anor v Gurdeep Singh a/l Atma Singh* [2000] 6 MLJ 112, in which the learned judge held that pursuant to the amended provisions, all that is required of the magistrate before making the detention order is to ensure that:

(1) the medical certificate shows that the detenu is a drug dependant;

(2) the rehabilitation officer has recommended that the detenu be sent for rehabilitation at a rehabilitation centre; and

(3) the detenu is afforded the opportunity to make representation.

[10] In addition, the learned judge further held that *habeas corpus* may issue against a detention order made under the amended s 6(1) if the order is found to be legally unsustainable.

[11] In the aforesaid case, there was a discrepancy between the certificate of the medical doctor and the report of the rehabilitation officer, which discrepancy the learned magistrate making the detention order has failed to appreciate. The certificate of the medical doctor stated that the applicant was addicted to morphine whereas the report of the rehabilitation officer stated that the medical officer had certified the detenu to be addicted to the drug heroin. On those facts, the learned judge, where relevant, held at p 126 D–E, G–H as follows:

> The discrepancy gave rise not only to doubts as to the nature of the drug the detenu had become dependant on but also to the wider question of whether he was a drug dependant in the first place to justify the making of the order under s 6(1) of the Act.
>
> The rehabilitation officer is duty bound to make a proper and accurate inquiry on the status of the detenu before he submits his recommendation to the magistrate In order to properly consider whether the detenu was a drug dependant he must be able to state with precision on what drug or drugs in particular was the detenu dependant on so that he can be properly treated and rehabilitated.
>
> The order made by the magistrate was under the circumstances absolutely unsustainable as the discrepancy was so fundamental as to have affected its legality having struck at its very objective of treating and rehabilitating drug dependants.
>
> It was also serious enough to affect the integrity of the rehabilitation officer on whom the magistrate had to rely on in making the order to send the detenu to the rehabilitation centre, that he should not have made the order.
>
> On this ground alone *habeas corpus* must issue.

[12] Those facts are strikingly similar to the facts in the instant application which I have narrated in the factual background above. I am in entire agreement with the dictum of his Lordship and apply it to the instant application, and accordingly hold that on the same ground the detention order is not legally sustainable, as a result of which *habeas corpus* must issue. I therefore make an order in terms of this application.

[13] I wish to record my appreciation to the learned senior federal counsel and applicant's learned counsel who have cited numerous authorities which I have considered but do not feel the need to refer to them for the purposes of preparing this judgment.

Application allowed.

Reported by AG Kalidas